

Attorney Docket No. 5246 P 003
(227376)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
SEILER et al.

Application No. 09/919,594

Filing Date: July 31, 2004

For: "Method and System for Information
Communication Between Positionees and
Positionors"

Examiner: Dodds, Harold E.

Group Art Unit: 2177

06/29/2005 SSITHIB1 00000001 230280 09919594

01 FC:1463 70.00 DA 130.00 DP

Mail Stop Petition
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. § 1.47(b) TO SUBMIT DECLARATION
ON BEHALF OF INVENTORS WHO CANNOT BE FOUND**

Dear Sir:

In accordance with 37 C.F.R. §§ 1.131 and 1.47(b), Petitioner respectfully requests entry of the two (2) Declarations submitted pursuant to 37 C.F.R. § 1.131 on September 20, 2004. The two (2) Declarations submitted on September 20, 2004, sought to swear behind four (4) references cited by the Examiner in an Office Action dated March 19, 2004. The first Declaration submitted on September 20, 2004, contained less than all of the signatures of the joint inventors. The second Declaration submitted on September 20, 2004, contained the signature of a representative of the assignee of all rights to the above-referenced application, the Illinois Department of Employment Security. Pursuant to 37 C.F.R. § 1.131 and MPEP 715.04, the assignee or other party in interest may make a § 1.131 declaration where it is not possible to produce the declaration of the inventor.

The basis for this Petition is that not all of the numerous joint inventors could be located to execute the § 1.131 Declaration on September 20, 2004. Notwithstanding the Illinois

06/28/2005 SSITHIB1 00000011 09919594

01 FC:1801 -790.00 DP
02 FC:1464 130.00 DP
Adjustment date: 06/29/2005 SSITHIB1
6/28/2005 SSITHIB1 00000011 09919594
2 FC:1464 -130.00 DP

Repln. Ref: 11/04/2005 SDIRETAL 0012422100
DAH:230280 Name/Number:09919594
FC: 9204 \$130.00 CR

Adjustment Date: 11/04/2005 SDIRETAL 09919594
06/29/2005 SSITHIB1 00000001 230280 -130.00 DP
01 FC:1463 70.00 CR

BEST AVAILABLE COPY

Attorney Docket No. 5246 P 003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Seiler et al.

Application No.: 09/919,594

Confirmation No.: 2534

Filed On: July 31, 2001

For: Method and System for Information
Communication Between Positionees and
Positionors

Mail Stop 16
Finance Office, Refund Section
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Examiner: Dodds, Harold E.

Art Unit: 2177

PATENT & TRADEMARK
OFFICE
2005 SEP 30 AM 10:22

REQUEST FOR REFUND OF PETITION FEE

Dear Sir:

Applicants received a communication mailed September 13, 2005 from the U.S. Patent and Trademark Office (copy attached). The communication states that the Petition under 37 C.F.R. 1.47(b) filed June 27, 2005 regarding this Application is dismissed as moot. The communication further states that Petitioner may request a refund of the previously submitted \$200 petition fee. Applicants hereby request a refund of the \$200 petition fee, and request that said fee be credited to Deposit Account No. 23-0280.

Respectfully submitted,


Dated: September 27, 2005

By: 

James P. Muraff, Reg. No. 39,785
Wallenstein Wagner & Rockey, Ltd.
311 South Wacker Drive, 53rd Floor
Chicago, Illinois 60606-6630
(312) 554-3300
Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service, with first class postage prepaid, in an envelope addressed to MAIL STOP 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 27, 2005.


Gillian Gardner/232468

BEST AVAILABLE COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

COPY

RECEIVED
SEP 19 2005

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Wallenstein & Wagner, Ltd.
53rd Floor
311 S. Wacker Drive
Chicago, IL 60606-6630

WALLENSTEIN WAGNER & ROCKEY, LTD.

COPY MAILED

SEP 13 2005

OFFICE OF PETITIONS

In re Application of

Seller, et al.

Application No. 09/919,594

Filed: July 31, 2001

Atty. Dkt. 5246 P 003

: DECISION ON PETITIONS

: UNDER 37 CFR 1.47 and

: 37 CFR 1.183

This decision is in response to the petition under 37 CFR 1.47(b) filed June 27, 2005. This matter is also being treated under 37 CFR 1.183 to waive the requirements of 37 CFR 1.131.

Petitioners seek to submit a declaration under 37 CFR 1.131, but state that all of the inventors are not available to execute the declaration.

DECISION UNDER 37 CFR 1.47

The provisions of 37 CFR 1.47 (and a petition thereunder) are only applicable to the initial filing, and PTO acceptance, of an application wherein one or more of the named inventors refuses to sign, or cannot be located so as to sign, the oath or declaration filed under 37 CFR 1.63. The instant case contains a properly executed declaration under 37 CFR 1.63. See MPEP 201.03(b); 409.03.

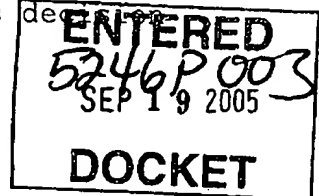
Accordingly, the petition under 37 CFR 1.47 is hereby DISMISSED AS MOOT.

Petitioner may request a refund of the previously submitted \$200.00 petition fee. Petitioner may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

DECISION UNDER 37 CFR 1.183

The provisions of 37 CFR 1.183 provide that "[i]n an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or

BEST AVAILABLE COPY



REST AVAILABLE COPY

Application No. 09/919,594

2

the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed."

pursuant to the provisions of 37 CFR 1.183, petitioners seek to waive the requirements of 37 CFR 1.131 and submit a declaration under 37 CFR 1.131 without the signature of all the named inventors.

The provisions of 37 CFR 1.131 provide that "[w]hen any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based."

The instant application is not subject to reexamination nor has the application previously been accorded status under 37 CFR 1.47. Accordingly, the inventors of the application must execute the Rule 1.131 declaration.

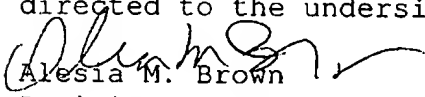
In order for a petition under 37 CFR 1.183 to be granted to waive this requirement that the non-signing inventors sign the Rule 1.131 declaration, petitioners must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

Petitioners have established that bona fide effort has been made to locate the non-signing inventors who are either unavailable, cannot be located, or deceased. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

The 37 CFR 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied.

The application file is being forwarded to Technology Center 2100 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.


Alesia M. Brown
Petitions Attorney
Office of Petitions